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## Bank Holiday and Capital Controls in Greece

by *Viktoria Chatzara*

### *Executive Summary*

From the 28.06.2015 a Bank Holiday has been imposed in Greece by means of a Presidential Legislative Act (PLA) on all credit institutions operating in Greece (Greek and foreign, as specified by the provisions of the PLA), which has been prolonged until the 19<sup>th</sup> July 2015 by means of a series of Ministerial Decisions and subsequent PLAs. Apart from the operation of the credit institutions, the operation of the Greek Capital Market has been also suspended, by means of a series of decisions of the Hellenic Capital Market Commission. During the suspension of the operation of the Greek Capital Market, only certain categories of actions are permitted, as described by Athens Exchange.

Along with the Bank Holiday, the PLA imposed capital controls in the Greek market, in the sense that only specific categories of banking transactions were permitted during the period of the Bank Holiday, mainly transactions performed by means of credit, debit or pre- paid cards, by distance (web-, or phone- banking), transactions of the Greek State, etc., whereas a Banking Transactions Approval Committee has been established, having the competence to approve or not specific transactions that did not fall into the scope of the permitted banking transactions (such as payments to foreign accounts or transfer of securities to foreign custodians, sales of securities to foreign investors etc.). Since the 20.07.2015, when the Bank Holiday was terminated, a series of new Capital Controls has been established by the PLA of 18.07.2015, the duration of which is not specified.

### *Bank Holiday*

Since the 28<sup>th</sup> June the Greek Government imposed by means of a Presidential Legislative Act (GG A' 65/28.06.2015) a bank holiday on all Institutions operating in Greece under any form, including any branches of foreign credit institutions, the Deposits and Loans Fund, the payment institutions of L.3862/2010, the electronic money institutions of L.4021/201, as well as the representatives and branches of any foreign payment institutions and electronic money institutions legally operating in Greece, until the 6<sup>th</sup> July 2015. The PLA authorized the Minister for Economics to prolong (or restrict) the duration of the bank holiday by means of Ministerial Decisions. In this capacity, the Minister for Economics issued a first Ministerial Decision

(MD) on 06.07.2015 (GG B' 1391/06.07.2015) prolonging the Bank Holiday until the 08.07.2015, a second MD on 08.07.2015 (GG B' 1420/08.07.2015), prolonging the Bank Holiday until the 13.07.2015 and a third MD on 13.07.2015 (GG B' 1460/13.07.2015), prolonging the Bank Holiday until the 15.07.2015. The Bank Holiday was further prolonged by means of a PLA of 14.07.2015 (GG A' 79/14.07.2015) until the 16.07.2015, and by means of an MD dated 16.07.2015 until the 19<sup>th</sup> July 2015.

On the 18<sup>th</sup> July 2015, a new PLA (GG A' 84/18.07.2015) declared the end of the Bank Holiday for all the Institutions falling into the scope of the first PLA since Monday, 20.07.2015. Nevertheless, the operation of the Greek banking system has not returned to normal, since the last PLA imposed a series of Capital Controls and restrictions on the banking transactions.

### *The Hellenic Capital Market*

Apart from the bank holiday, the Hellenic Capital Markets Commission decided on the 29<sup>th</sup> June that during the Bank Holiday, the Athens Exchange Markets (cash & derivatives) and the Multilateral Trading Facility of the Alternative Market (EN.A.), the Electronic Secondary Securities Market of the Bank of Greece, shall remain closed. Moreover, the redemption of mutual fund shares, the operation of the Athens Exchange Clearing House SA (ATHEXClear) with respect to clearing of trades at ATHEX and the operation of the Athens Central Securities Depository with respect to the cash settlement concerning securities of the Greek market, were also suspended during the same period. Following its first decision of the 29.06.2015, the Hellenic Capital Markets Commission issued respective to the above MDs, decisions and relevant announcements, according to which the duration of its first decision was prolonged until the 19.07.2015. As noted, the Bank Holiday was terminated by means of the new PLA of 18.07.2015, starting on the 20<sup>th</sup> July 2015. However, taking into account the limitations on the banking transactions imposed by the new PLA, the Hellenic Capital Markets Commission issued an announcement dated 20.07.2015 stating that the suspension of the Hellenic Capital Market's operation, as described above, will continue in force, until the limitations described under Article 1 par. 10 points (γ) and (δ) of the last PLA are lifted by the Minister for Economics.

It should be noted that, at its meeting of the 30<sup>th</sup> June 2015, the Hellenic Capital Market Commission decided to lift the suspension of the clearing operations of ATHEXClear in order for outstanding transactions and relevant obligations in the Athens Exchange Market to be settled. Suspension of the operations of the Athens Central Securities Depository was lifted respectively for the purposes of relevant outstanding settlements. According to the HCMC, the clearing and settlement of such outstanding transactions has been successfully completed.

Athens Exchange (ATHEX) issued a relevant FAQ document, describing which operations are allowed and performed normally during the Bank Holiday. According to this document, any corporate actions of listed companies are carried out normally. In the event that they result in the listing of new securities, these securities will be listed normally but are not actually traded. As far as Over-The-Counter transactions on securities monitored in the Dematerialized Securities System (DSS) are concerned, the suspension continues to apply for settlements that are performed under the method of "Delivery versus Payment", whereas settlements and any kind of transfers with the method of "Delivery Free of Payment" are carried out normally. With respect to transactions performed through XNET Network, only the following are allowed: (a) OTC-FOP transactions and transfers of securities, and (b) sales transactions on foreign securities. With respect to the provision and/ or release of collaterals, ATHEX notes that Clearing Members may request normally the release of their additional collateral, as well as the provision of any additional collateral in cash and/ or in stocks.

### Capital controls

Pursuant to the last Presidential Legislative Act (PLA) of the 18.07.2015 a series of capital controls are also imposed following the termination of the Bank Holiday, according to the following:

- (a) Cash withdrawals from ATMs are allowed only up to the amount of €60 per card per CustomerID, per Institution and per day. Should a Customer not withdraw for one or more days the amount of €60, a cumulative withdrawal is permitted up to the amount of €420 per week.
- (b) The prohibition of cash withdrawal also applies on any other cash payment from the Institutions, regardless of the currency in which it is made. This prohibition includes, among others, the collection of bank checks, payments on the basis of a Letter of Guarantee, which shall be deposited in a bank account, which is subject to the above, under point (a) withdrawal limitations. Any

withdrawals of cash by means of credit and pre-paid cards in Greece or abroad, are also prohibited.

- (c) The transfer of cash or capitals abroad, in any way, is also prohibited, including any transfer order to accounts having their seat and operating abroad, as well as capital transfers by means of credit, pre-paid and debit cards used for cross-border payments. However, the use of credit and debit cards abroad for the purpose of purchasing goods or services without cash is allowed, for amounts up to the limit set for each credit institution by the Banking Transactions Approval Committee.
- (d) New bank accounts, of any kind, cannot be opened, co-beneficiaries shall not be added to an existing bank account and any dormant accounts shall not be reactivated. The opening of new bank accounts is exceptionally permitted for the following purposes, provided that the respective needs are documented in writing and that there is no other available bank account, through which the necessary transactions may be performed:
  1. the payment of wages of the personnel;
  2. the payment of any obligations the depositor may have towards the credit institution itself, arising from contracts concluded before the 28.06.2015;
  3. the payment of new pensions and new welfare benefits;
  4. the clearing of card transactions from new acquiring contracts;
  5. the service of newly established (after the 01.05.2015) legal persons;
  6. the service of startup companies which participate in support programs for the new entrepreneurship;
  7. deposits as cash collateral for a letter of guarantee, documentary credit or loan facility in the same credit institution;
  8. the opening of a bank account in favor of a third person in order either to comply with an order for execution of a monetary claim based on an order for payment, a court decision or another enforceable title, or to pay off a claim, for which a seizure in the hands of a third party has been imposed, in favor of the beneficiary of the claim, unless the latter has declared another bank account by any procedural action;
  9. the credit of funds from abroad in Euros or in a foreign currency, at least of an amount of €10.000 (or its equivalent in the foreign currency);

10. the acceptance of a term deposit, only if its beneficiaries are the same as the beneficiaries of its feeding account (of any kind); and
  11. any other transaction, following its approval by the Banking Transactions Approval Committee.
- (e) The premature, partial or total, payment of a loan to an Institution is not permitted, except if the payment is made by means of cash or remittance from abroad.
- (f) The premature, partial or total, termination of term deposits is also prohibited. Such premature partial termination is allowed, exclusively in order to pay an equal amount:
1. to the Greek State and social security organizations;
  2. as current installment and due amounts for a loan facility to the same credit institution;
  3. wages within the same credit institution;
  4. hospitalization and education fees in Greece or abroad;
  5. to suppliers who maintain a bank account in the same credit institution, for invoices or other equivalent documents, provided there is not sufficient capital to any other bank account.
- (g) It is also provided that the Governor of the Bank of Greece may issue a decision setting further limitations to the transfer of banknotes (in Euro or even in foreign currency) outside the Greek State. Such decision may provide for more specific details of the prohibition, such as different provisions concerning Member States of the Schengen Area and other States outside EU, or specific exceptions for certain categories of people.

### Exceptions

The PLA also provides for specific exceptions from the capital controls status put into force. In this respect, the following transactions are exempted from the above prohibitions and restrictive provisions:

- (a) Transactions of the Hellenic Republic;
- (b) Transactions of the Bank of Greece;
- (c) Certain transactions, whose conduct is approved by the Banking Transactions Approval Committee;
- (d) Cross- border payment orders concerning exclusively the credit of a bank account held in an Institution in Greece;
- (e) Capital transfer transactions concerning the liquidity management of a credit Institution operating in Greece

and in order to pay obligations in the context of managing contracts existing before the first PLA of 28.06.2015, such as (indicatively), payments in connection with securities securitizations the Institution issued, clearing of transactions conducted through payment cards of international card schemes, transactions concerning margin exchange in the context of international contracts (ISDA, CSA, GMRA, Escrow, EIB, other collaterals, etc.) with foreign credit institutions, etc., according to a procedure defined by the Institution's management and notified to the Banking Transactions Approval Committee. The Committee shall be also notified of the documentation proving the existence of the contracts and the respective transactions falling into the scope of the present exception;

- (f) All monetary amounts transferred from abroad and credited to bank accounts held in an Institution operating in Greece, provided they are also transferred to a bank account held in a credit institution operating abroad. The relevant Institution will bear responsibility for the relevant documentation for the inflow and the respective outflow of capital, which shall be complete.
- (g) Credit transfers by a Greek educational public or private law organization or technological institution in the sense of L.4310/2014 to a bank account held in a credit institution seated and operating abroad, concerning amounts deriving exclusively from credit transfers from abroad, which has been credited to an account held in a credit institution operating in Greece within 2015 exclusively for the service of educational or research purposes, through the Special Account for Research Funds.
- (h) Payment of salaries abroad concerning employees in diplomatic missions, permanent representations or other services of the Greek State, by means of credit transfer of an equal amount to a bank account held in a credit institution operating abroad. Employees in diplomatic missions, permanent representations or other services of the Greek State abroad, who maintain bank accounts for their salaries in a credit institution seated and operating in Greece, are allowed to transfer an amount equal to their salary abroad, by proving in writing their capacity;
- (i) Remittance by a Greek public educational public or private law organization or technological institution in the sense of L.4310/2014 to an account held in a credit institution seated and operating abroad of an amount deriving exclusively from a remittance from abroad, which was executed following the entry into force of the

PLA of 18.07.2015, exclusively for the purposes of the research program;

- (j) Without limitations cash withdrawal from one, per each beneficiary, bank account of embassies and members of diplomatic missions in Greece, by exhibiting the respective written certification from the embassy or the diplomatic passport;
- (k) The payment from payment institutions of L.3862/2010 of cash to beneficiaries of remittance from abroad, if the respective amount has been physically imported from abroad since the entry into force of the last PLA, by a respective declaration of the import to the Bank of Greece. The transportation of monetary remittances within the Greek State by paying cash to the beneficiaries is also permitted, provided that the payer has deposited the total amount in physical form;
- (l) The payment of hospitalization and medical expenses and tuition, by providing the necessary documentation to prove that the relevant conditions are met, to the credit institution through which the transaction is performed. The payment of such expenses is conducted, obligatorily, electronically through the credit institution to a bank account held abroad for their credit and not to a bank account of the beneficiary himself/herself;
- (m) With respect to hospitalization expenses abroad, the payment of an amount up to €2.000 in cash (or its equivalent in foreign currency) is allowed, for one escort;
- (n) The transfer of a maximum amount of €5.000 (or its equivalent in foreign currency) per each calendar trimester, is permitted, for residence and living expenses of students studying abroad or participating in students exchange programs. Such payments are made exclusively electronically, to a bank account held abroad and having the student as beneficiary.

### *Special issues*

The PLA of the 18.07.2015 also regulates special issues in connection with the operation of the Institutions following the termination of the Bank Holiday:

- (a) In case of seizure of a monetary claim in the hands of a credit institution, the Bank of Greece or the Deposits and Loans Fund, as third party, the payment of the amount of the claim in cash is not allowed. The amount may be either paid by the issuance of a bank check or credited to a bank account of the beneficiary of the claim, held in the same or another credit institution.

- (b) The conclusion of acquiring contracts concerning transactions with payment cards is prohibited, in the event that their clearing takes place by means of credit of a bank account of the merchant, which is held abroad, with a provider of payment services.
- (c) The transfer abroad of the custody concerning securities, which were obtained after the entry into force of the Bank Holiday, is also prohibited. The transfer abroad of the custody concerning securities which are traded in regulated markets or multilateral trading facilities operating in and out of Greece is also prohibited.
- (d) Transfers of capitals for the purposes of purchasing financial instruments described in Article 5 of L.3606/2007 through regulated markets and multilateral trading facilities or professionals having such financial instruments, such as UCITS or AIF are also prohibited.

It should be noted, with respect to points (c) and (d), that these restrictions caused the Hellenic Capital Markets Commission to prolong the suspension of the Hellenic Capital Market's operation. The new PLA notes that the Minister for Economics, following a recommendation from the Bank of Greece and the Hellenic Capital Markets Commission, may issue a decision lifting these restrictions and regulating the terms for such capital transfers.

- (e) With respect to the "Black Sea Trade and Development Bank, the new PLA specifically provides that it does not fall into the scope of the restrictions and prohibitions on the banking transactions described in the PLA.
- (f) The Bank of Greece obtains the authority to proceed with sampling checks, in order to control the compliance of the credit institutions with the provisions of the PLA. In the event of a breach of these provisions, a fine is imposed on the relevant Institution, up to 1/10 of the amount of the respective transaction.
- (g) Any person who breaches the provisions of the PLA is punishable with imprisonment up to 3 months and monetary penalty of up to 1/10 of the amount of the respective transaction. Moreover, the relevant credit institution shall terminate the employment (or other) contract if it has concluded with the liable for the breach person. As far as penal provisions are concerned, the last PLA maintains in force the provisions of the PLA of 30.06.2015, according to which any person denying payment by means of credit, debit or pre-paid cards, shall face imprisonment and monetary penalties, in accordance with the Greek Penal Code.

## *The Banking Transactions Approval Committee*

Transactions which are deemed necessary by Banking Transactions Approval Committee are also exempted from the capital controls regime, as described above. The Committee was firstly established in the General Accounting Office of the State (GAO), whereas by means of the PLA of 14.07.2015 and it was transferred to the Secretariat General for Economic Policy of the Ministry for Economics by means of the PLA of 14.07.2015. The last PLA of 18.07.2015 explicitly states that the provisions referring to the Banking Transactions Approval Committee remain into force. According to these, the Committee comprises of: i) the Secretary General for Economic Policy as Chairman and the Head of the DG for Economic Policy of the Secretariat General for Economic Policy of the Ministry for Economics as his subsidiary, ii) the Head of the DG for Fiscal Policy and Budget of the Secretariat General for Fiscal Policy/GAO of the Ministry for Economics and the Head of the DG for the Treasury and Public Accounting of the same Secretariat General as his subsidiary, iii) a representative of the General Secretariat for Commerce and Consumer Protection of the Ministry for Economy, Infrastructure, Marine and Tourism with his subsidiary, as they are appointed by a Ministerial Decision of the respective Minister, iv) a representative of the Bank of Greece with his subsidiary, as appointed by the Governor of the BoG, v) a representative of the Hellenic Bank Association with his subsidiary as appointed by its Chairman, and vi) a representative of the Hellenic Capital Market Commission with his subsidiary, as appointed by its Chairman. The Committee will be competent to approve the performance of certain banking transactions, which are not included in the above exceptions. The PLA states that requests concerning transactions essential for the preservation of public or social interest, including (but not limited to) transactions for the payment of medical expenses or the import of pharmaceuticals, foodstuffs, raw materials and fuels, shall be examined as a matter of priority. With respect to the transfer of the Committee from the GAO to the Ministry for Economics, the latest PLA specifically states that its electronic and material archive shall be respectively transferred, whereas any pending requests, which had been submitted to the GAO, will be examined as a matter of priority from the Committee of the Ministry for Economics.

The Committee may also issue a decision, according to which a special sub-commission will be established within each credit institution, for the approval of part or all the above mentioned transactions. Such decision of the Committee will also include all the details for the operation of these sub-commissions, including the amount and the

distribution per each credit institution of the daily limit for each category of transactions, and the readjustment of these limits.

The Committee shall be assisted by a Support Group, established in the Secretariat General for the Economic Policy. This Group shall compile the requests for approval of banking transactions and the respective suggestions of the credit institutions, check if the supplementary documentation is complete, prepare the meetings of the Committee, draft their Minutes and the Decisions, record, monitor and analyze electronically the data concerning the requests and the respective approvals, as well as provide any secretarial support to the Committee.

The members and the Secretary of the Committee (both the one established by the first PLA of 28.06.2015 and the latest, established by the PLA of 14.07.2015), as well as the members of the Support Group do not bear any penal, civil, administrative or other liability in connection with the performance of their obligations, unless proven that they acted by intent.

Until the 16.07.2015 the Committee has examined 2.639 requests out of the 3.243 totally submitted. According to a relevant announcement of the Ministry for Economics, 34,4% of the requests were approved by a decision of the Committee, allowing transactions of a total amount of €819,9 mil under the precondition that all the approved transactions were actually performed. From this total amount, €22,9 mil concerned hospitalization expenses, pharmaceuticals and other medical equipment, €59,8 mil concerned foodstuffs, raw materials and material for food packaging, as well as animal feed, and €195,8 mil concerned import of petroleum products and energy, as well as other energy products. Finally, an amount of €291,9 mil concerns transactions such as (indicatively) tuition payments to foreign universities, national defense expenses, marine expenses, airline companies expenses, barren line expenses and conditions for the use of credit and debit cards by Greek citizens abroad, in order to cover their primary needs.

The latest PLA, pursuant to which the Bank Holiday was terminated, modified significantly the capital controls regime which existed during the term of the Bank Holiday. It is expected that the complete restoration of the Greek banking system's operation will be progressively achieved, probably by means of amendments to the latest PLA and gradual increase of the permitted banking transactions and loosening of the respective restrictions. As a result, it is necessary to monitor on a daily basis the regulatory developments, in order to ensure that any actions taken are in compliance with the applicable provisions.

## ECB's OMT Programme is compatible with EU law, according to European Court judgment

by Athina Siafarika

In 16 June 2015, the Court of Justice of the EU (the "Court") delivered an important judgment confirming the compatibility of the well-known ECB Outright Monetary Transactions Programme (OMT) with European Law. The Court has held that the OMT Programme announced by the ECB in 2012 for the purchase of government bonds on secondary markets does not exceed the powers of the European Central Bank (ECB) in relation to monetary policy and does not contravene the prohibition of monetary financing of Member States set out in the Treaty on the Functioning of the European Union (TFEU).

### The OMT Programme

The OMT Programme refers to the Eurosystem's outright transactions in secondary sovereign bond markets that aims in safeguarding the efficient operation of the monetary policy transmission mechanism and the singleness of the monetary policy.

This Programme was announced in 2 August 2012 and was launched in September 2012 as part of a series of measures taken by the ECB in response to the Euro crisis. The Program was based on an analysis of the economic situation of the euro area, according to which, at the date of the Program's announcement, interest rates on government bonds of various States of the euro area were characterized by high volatility and extreme spreads. According to the ECB, those spreads were not accounted for solely by macroeconomic differences between the States concerned but were caused, in part, by the demand for excessive risk premia for the bonds issued by certain Member States, such premia being intended to guard against the risk of a break-up of the euro area. That special situation severely undermined the operation of ESCB's monetary policy transmission mechanism in that it gave rise to fragmentation as regards bank refinancing conditions and credit costs. OMT was intended to restore this malfunctioning by providing depth to certain illiquid segments of the sovereign bond market.

Benoit Cœuré, Member of the Executive Board of the ECB, had stated that *"When OMTs were announced in August 2012, financial fragmentation had created widely divergent borrowing costs for firms and households across euro area*

*countries. As a result, the transmission of monetary policy was severely impaired. (...) In any economy, the government bond market plays a prominent role in the transmission of monetary policy and ultimately matters for the effective achievement of the central bank's objective- in our case, price stability [see below on price stability]. Changes in long-term government bond yields are an important driver of corporate bond yields and bank lending rates. (...) the sovereign bond market turmoil rapidly spilled over to banks and ultimately reached households and firms. As a consequence, the entire economy's lending conditions deteriorated significantly in the countries under stress. (...) In this challenging environment, we were losing the steering function of our monetary policy".<sup>1</sup>*

In 5 and 6 September 2012, the Governing Council of the ECB approved the main parameters of the Outright Monetary Transactions (OMT) Programme. For a country to be eligible to participate in the OMT, it should follow strict and effective conditionality attached to an appropriate European Financial Stability Facility/ European Stability Mechanism (EFSF/ESM) programme. In the latter case, such an arrangement can take the form of a full ESFF/ESM macroeconomic adjustment program or a precautionary programme (Enhanced Conditions Credit Line), provided that they include the possibility of EFSF/ESM primary market purchases. The involvement of the IMF shall also be sought for the design of the country-specific conditionality and the monitoring of such a programme. The Governing Council of the ECB will consider OMTs to the extent that they are warranted from a monetary policy perspective as long as programme conditionality is fully respected, and terminate them once their objectives are achieved or when there is non-compliance with the macroeconomic adjustment or precautionary programme. OMTs will focus on sovereign bonds with a maturity of between one and three years; no *ex ante* quantitative limits had been set.

<sup>1</sup> "Outright Monetary Transactions, one year on", speech by Benoit Cœuré, 2.9.2013  
<https://www.ecb.europa.eu/press/key/date/2013/html/sp130902.en.html>

## The request for a preliminary ruling

In 14 January 2014, the German Federal Constitutional Court (BVerfG), by a decision, requested the Court for a preliminary ruling in relation to the Outright Monetary Transactions (OMTs) Programme. Briefly, the BVerfG implied that the OMT Programme is not covered by the mandate of the ECB and infringes the provisions of the Treaty on the Functioning of the EU (especially Art.123 TFEU), thus constituting an *ultra vires* act. If that was indeed the case, i.e. if the ECB transgressed the limits of its powers derived from the Treaties, this would “breach the principle of democracy entrenched in the German Basic Law and thereby impair German constitutional identity”. In this context, the BVerfG posed two specific preliminary questions to the Court:

- ♦ *Firstly, is the OMT Programme an economic rather than a monetary policy measure thus falling outside the scope of powers delegated to the ECB?*
- ♦ *Secondly, is the OMT violating the prohibition of monetary financing of Member States?*

## Delimitation of monetary policy

As presented above, the OMT Programme rests on two conditions: on the one hand, the application of an EFSF/ESM programme and on the other hand, the need to serve monetary policy objectives. Besides, Article 18.1 of the Protocol on the ESCB and the ECB allows the ECB and the national Central Banks to operate in the financial markets by buying and selling outright marketable instruments in euro.

Under Art.282.1 of the Treaty on the Functioning of the EU (TFEU) the ECB and the Central Banks of the Member States whose currency is the euro, which constitute the Eurosystem, are to conduct the monetary policy of the Union. Under Art.127.1 and 282.2 TFEU, the primary objective of the Union’s monetary policy is to maintain price stability. The Court argued that measures that are intended to preserve the monetary policy transmission mechanism may be regarded as pertaining to the primary objective laid down in Art.127.1 TFEU. Besides, the ability of the European System of Central Banks (ESCB) to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the “impulses” which the ESCB sends out across the money market to the various sectors of the economy. Consequently, if the monetary policy transmission mechanism is disrupted, this is likely to render the ESCB’s decisions ineffective in a part of the

euro area and, accordingly, to undermine the singleness of monetary policy. The OMT Programme was intended to rectify the disruption to the monetary policy transmission mechanism caused by the specific situation of government bonds issued by certain member states and thus, falls within the powers conferred by the Treaties to the ECB.

The fact that the implementation of such program is made conditional upon full compliance with EFSF or ESM macroeconomic adjustment programs does not alter the aforementioned conclusion. To put it otherwise, the fact that the OMT programme might also contribute to the stability of the Eurozone, which is a matter of economic policy, does not alter the main character of the Programme as a monetary policy tool. According to the Court, it is possible that a government bond-buying program may indirectly further the economic policy objectives of those programs. Such indirect effects do not mean that such a program must be treated as equivalent to an economic policy measure.

## The prohibition of monetary financing of Member States

Article 123.1 TFEU prohibits the ECB and the Central Banks of the Member States from granting overdraft facilities or any other type of credit facility to public authorities and bodies of the Union and of Member States and from purchasing directly from them their debt instruments. However, this provision does not prohibit the ESCB purchasing from the creditors of such a State, bonds previously issued by that State, as long as those purchases made on the secondary market may not be used to circumvent the objective of the prohibition. In this regard, the Court concluded that the features and the implementation of the programme would not have such an effect nor would it lessen the impetus of the Member States concerned to follow a sound budgetary policy. Besides, the Programme is limited to certain types of bonds only issued by those Member States which are undergoing a structural adjustment programme or when they will be regaining access to the bond market. At the same time, those bonds can be sold again at any time.

## Implications

Further, the Court has stated that the ECB must be allowed “broad discretion” when it “prepares and implements an open market operations programme” as it needs “to make choices of a technical nature and undertake forecasts and complex assessments”. It has to be noted, though, that



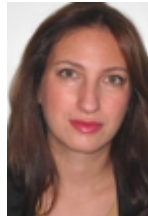
concerns have been raised on potential conflicts of interest the ECB could find itself involved in. For example, the ESM Treaty confers multiple responsibilities on the ECB in the course of a financial assistance programme, including participation in negotiations and monitoring. The ECB's hybrid role in the Troika raises concerns about possible conflicts of interest that the ECB could experience in relation to the conduct of its other functions. The potential conflict of interest with the ECB's bond-purchase programmes is especially strong. By buying bonds of vulnerable countries in the context of OMT, the ECB would become formally a creditor of the governments receiving financial assistance, and this

may influence its position in the negotiations and its assessment of conditionality.

Despite the possible concerns, this is clearly an important judgment by the Court since it secured a sufficient degree of legal certainty and, at the same time, discretion for the ECB to continue playing its pro-active monetary policy role in the handling of the Eurozone crisis. In view of the request submitted by the Hellenic Republic for a new ESM programme for the provision of financial assistance, the mechanics and possible implementation of the OMT tool may be of importance in the Greek and European future, as encompassed in ECB's Quantitative Easing (QE) program of asset purchases worth about 1.1 trillion euros.

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